

IN THE  
SUPREME COURT  
OF THE  
UNITED STATES.

---

THE UNITED STATES,  
*Appellant,*  
VS.  
EARL B. COE,  
*Appellee.*

---

*Appeal from the  
Court of Private  
Land Claims.*

---

PETITION FOR REHEARING.

---

(a) Showing Interest of Petitioner.

Now comes the Denver Savings Bank, trustee, and by leave of court first had and obtained, presents this, its petition, and respectfully shows unto this honorable court: That it is a corporation organized and existing under the laws of the state of Colorado, and is now, and ever since the year 1890, has been, doing business in the city of Denver, in said state of Colorado.

That, under its articles of incorporation or charter, it is authorized and empowered "to accept any

trust which may be created by instruments in writing appointing said bank trustee for any lawful purpose, and to act as such trustee in all matters embraced in or pertaining to such trust."

That, under and by virtue of a deed of trust executed by the appellee herein, Earl B. Coe, bearing date March fifteenth, A. D. 1893, acknowledged the same day and recorded March twenty-fourth, 1893, in the office of the recorder of deeds in Yuma county, Arizona, in book P of said records, at pages 384 et seq., your petitioner, the Denver Savings Bank, became and ever since has been the trustee in said deed of trust for the holders of one hundred and fifty thousand dollars of mortgage bonds therein mentioned and described, and secured upon the lands and premises therein described, which lands and premises embrace the larger portion of the Rancho El Paso de Los Algodones involved in the controversy herein.

That, as such trustee, your petitioner represents the holders of such bonds, who are too numerous to mention, and whose names and residences to your petitioner are in part unknown.

Your petitioner further states that such deed of trust, and such trusteeship was accepted by it on said fifteenth day of March, 1893, after the date of the final decree herein by the Court of Private Land Claims, and before any appeal had been taken by the appellant herein; that it caused the titles to such lands to be examined, and report was made to it and to those contemplating the purchase of such bonds, that said Court of Private Land Claims had passed upon the titles to said Rancho El Paso de Los Algodones, and had found that the same were

valid in the appellee, Earl B. Coe, and that the sale thereof had been affirmed by the board of sales created by the Mexican national government, and the title thereto affirmed by such government, and never questioned.

That it found as a matter of fact that the appellee, Earl B. Coe, was in possession of said rancho, and had made large and valuable improvements thereon. That, on the strength of such decree and such possession, your petitioner became such trustee, and, itself invested its funds in a portion of such bonds so secured by said deed of trust.

That it is informed and believes that all of such bonds, to the amount of one hundred and fifty thousand dollars, are now outstanding and held by various parties scattered over the United States who have paid par therefor upon the strength of such security and in good faith, and your petitioner as such trustee files this petition on their behalf as it is empowered to do by the terms of such mortgage or deed of trust, to protect their interests in such lands and premises; that hitherto it has entrusted the management of this controversy to the appellee, and relied firmly upon the decree of said Court of Private Land Claims, but it is now informed by the holders of said bonds secured by said deed of trust residing in the Eastern states who have kept informed upon the subject, that the opinion in this court was prepared and written by the late attorney general, who, as the head of the department of justice, in the line of his duties, had charge of the employment of and directed his assistant in the management of this case in this court, and such bondholders request your petitioner to respectfully urge this honorable court,

for that reason, to withdraw its opinion heretofore filed herein, and grant a rehearing and reargument thereof.

All of which is respectfully submitted.

AMOS STECK,

Attorney for Petitioner.

Denver, Colorado.

MESSRS. CARPENTER & McBIRD,

Of Counsel

State of Colorado, County of Arapahoe, ss.

George R. Swallow, being duly sworn, says that he is the president of the Denver Savings Bank, the petitioner named in the foregoing petition; that he has read said petition and knows the contents thereof, and that the same is true as to all things of his own knowledge, excepting as to such things as are therein stated upon information and belief, and as to such matters he believes it to be true.

GEORGE R. SWALLOW.

Subscribed and sworn to before me this 21st day of June, A. D. 1898. My commission expires May 10, 1901.

CARLOS WOOD,

Notary Public.

---

(b) Grounds for Rehearing:

Your petitioner named in the above and foregoing petition the Denver Savings Bank, by its counsel, leave of court having been first had and obtained, and its interest in this controversy having been shown in said petition, respectfully prays this honorable

court to withdraw the opinion heretofore filed herein, and grant a rehearing and reargument in said cause, for the following reasons, viz.:

First—For the reason that the late attorney general, who had general supervision of this case, participated in the hearing and determination thereof.

Second—In the statement of the case it is found that “the board of sale consisted of certain officers, among whom was the treasurer general. The powers of the board with reference to the sale of public lands were conferred and defined by the laws of the Central Mexican government.” This honorable court erred in holding that the grant was from the state of Sonora alone.

Third—This honorable court erred in holding that the states or departments surrendered their power of disposition of the public lands by virtue of the Constitution of 1836.

Fourth—This honorable court erred in holding that the source of appellee’s title was not the Central Mexican government.

Fifth—This honorable court erred in holding that the board of sales did not comply with the laws of the Mexican central government in the sale of these lands.

---

#### BRIEF AND ARGUMENT.

We deem it unnecessary to present any brief or argument in support of the first ground for rehearing. The mere suggestion would seem to be sufficient reason for the rehearing and reargument of the case.

As to the other grounds assigned for rehearing, we can add nothing to the argument of counsel for the appellee.

AMOS STECK,  
Attorney for Petitioner.

MESSRS. CARPENTER & McBIRD,  
Of Counsel.

We hereby certify that, in our opinion, the foregoing petition is well founded in law.

AMOS STECK,  
Attorney for Petitioner.  
CARPENTER & McBIRD,  
Of Counsel.

IN THE  
SUPREME COURT  
OF THE  
UNITED STATES.

---

THE UNITED STATES,  
*Appellant,*

vs.

EARL B. COE,  
*Appellee.*

*Appeal from the  
Court of Private  
Land Claims.*

---

PETITION FOR REHEARING.

---

Now comes Earl B. Coe, appellee in the above entitled action, by his counsel, leave of court having been first had and obtained, and respectfully prays this honorable court to withdraw the opinion heretofore and on the 23d day of May, A. D. 1898, filed herein, and grant a rehearing and reargument in said cause, and for grounds therefor respectfully represents:

First—That this learned court erred in stating in said opinion the source from which the appellee claimed title to the land involved in this controversy, in this: The opinion, after quoting the original petition (page 2), says:

“The source of the title is therefore alleged to be in the state of Sonora and the basis of its authority is explicitly given.”

And, again, on the same page, this language is used:

“The allegation or claim, then, is a grant from the state of Sonora. There is no claim of a grant from the Mexican government.”

In this the learned court overlooked the claim of the petitioner that his title was from both the Mexican nation and the state of Sonora.

Second—The learned court erred in holding that the states or departments surrendered their rights in and power of disposition of the public lands by virtue of the Constitution of 1836.

Third—The learned court erred in holding that the appellee did not have title from the Mexican nation, and that the laws of the nation were not complied with by the board of sales (Junta de Almondes) in making the sale to Rodriguez.

Fourth—The learned court erred in the statement that it was conceded that the state of Sonora was in rebellion against the Mexican nation and declaring its independence of that nation at the time title was issued to Rodriguez.

### BRIEF AND ARGUMENT.

First—Upon the proposition that appellee claimed title from both the nation and state:

The statement of the learned court:

“The allegation or claim, then, is a grant from the state of Sonora. There is no claim of a grant from the Mexican nation.”

Is based on the petition as originally filed, and it is more the fault of counsel who writes this petition for rehearing (Mr. Stevenson) than of the honorable court that this error is made. The facts are, I was not of counsel until after the first trial in the Court of Private Land Claims and did not prepare the original petition. It was the first petition filed in that court. The practice was new, and the investigation since made by court and counsel has at least demonstrated that it was most difficult to determine the true state of affairs with reference to these land titles, and I am persuaded that counsel who filed the original petition did even better than the counsel who has since had active charge of the case would have done at that time. It is true that the original petition in terms only claimed the title from the state of Sonora. It was, however, stipulated and agreed between counsel for the government and the claimant that the petition should be considered as amended, so as to claim title both from the nation and state. This stipulation, which in fact contained the amendment, was made at Tucson, Arizona, in February, 1893. The clerk of the court below has not included it in the record. I mention it in my brief as follows:

“It was stipulated between counsel at the time of the decision of the court at Tucson that the petition might be amended so as to cover the questions presented in argument, that the grant was made by national officers and recognized and approved by the national government. This stipulation, for some reason, does not appear in the record. The opinion of the court and the decree entered thereon is in harmony with the amendment agreed to.” (Appellee’s brief, page 8.)

I intended to, and presume I did, repeat this statement in oral argument before this honorable court. The decision of the Court of Private Land Claims and the decree each recited that the petitioner had title both from the nation and the state. (Record, pages 237-47.) The decree was agreed upon by counsel. (Record, page 236.)

Second—I respectfully submit that the court erred in holding that the states or departments surrendered their right in and power of disposition of the public lands by virtue of the Constitution of 1836.

It is now the settled law of this court that prior to the promulgation of the Constitution of 1836 “the several states had authority to make sales of vacant public lands within their limits, and that such sales, unless annulled by the national government, must be considered as grants to be recognized by this government under the terms of the treaty of 1853.” (Camou vs. United States, May 31, 1898.)

And this authority was, in part at least, derived from the act of August 4, 1824, concerning which Mr. Justice Brewer, speaking for the court in *Camou vs. The United States*, says:

“The language of the revenue decree of 1824 is indefinite and does not, in terms, name vacant public lands, yet both the nation and the states understood that its effect was to grant authority to the states to sell such lands and appropriate the proceeds in settlement of the amounts charged against them by the nation.”

That we may better understand the animating spirit of the Mexican form of government, I quote:

“It must not be forgotten that Mexico, since its separation from Spain, in 1821, was assuming to act as a republic, subject to express constitutional limitations. While temporary departures are disclosed in her history, the dominant and continuous thought was of a popular government under a constitution, with defined rights, duties and powers.” (Mr. Justice Brewer in the *Camou* case, *supra*.)

There was no warrant or authority in the Constitution of 1824 authorizing the congress of the Mexican nation to destroy the autonomy of the states and abolish their legislatures. That instrument provided the manner for its amendment, but it was expressly provided that the powers delegated to the several states of the Union should never be curtailed or abridged. Article 171 of the Constitution of

the United Mexican states, of October 4, 1824, is as follows:

“Article 171. Those articles of this Constitution and of the constitutive act which established the liberty and independence of the Mexican nation, its origin, form of government, liberty of the press and the division of the supreme powers of the Union *and of the states can never be changed.*” (1 White, page 410.)

The politician arm of our own government regarded the acts of the Mexican congress changing from the federal to the central system of government as but an usurpation, concerning which President Polk, in his second annual message, December 8, 1846, says:

“By a sweeping decree of a congress subservient to the will of the dictator the several state Constitutions were abolished and the states themselves converted into mere departments of the central government. The people of Texas were unwilling to submit to this usurpation. Resistance to such tyranny became a high duty.” (Appellee’s brief, pages 48-49.)

And the Mexican nation itself regarded the acts passed for the purpose of centralizing the government as passed without authority and insisted that the Constitution of 1824 had always remained in full force and vigor, and that the rights, powers and privileges delegated to the several states by virtue of that Constitution had never been abrogated.

In the act of constitutional reforms of the Mexican nation of May 18, 1847, passed by a congress elected upon the downfall of the central system and in accordance with the Constitution of 1824, it is said:

“The states of Mexico by a spontaneous act of their own individual sovereignty and to consolidate their independence, guarantee their liberty, provide for the common defence, establish peace and procure the welfare thereof, formed a confederation in 1823, and afterwards, in 1824, constituted a political system of union for their general government under the form of a popular representative republic and upon the pre-existing foundation of their natural and reciprocal independence.

“That that compact of alliance, the origin of the first Constitution and the only legitimate fountain of the supreme power of the republic, subsists in all its primitive vigor and is, and must be, the principle of every fundamental institution;

“That this same constitutive principle of the federal union, *if it has been opposed by a superior force could not and can not be altered by a new Constitution.*” (Reynolds, page 281.)

From this it will be clearly seen that the congress regarded the autonomy of the states as having continued unimpaired, although opposed by a “superior force” of those who had imposed the central system upon the nation.

This is further illustrated by the declaration in the same act of reforms:

*"That the states that compose the Mexican Union have recovered the independence and sovereignty that were reserved to them in the Constitution for their interior administration."* (Reynolds, page 281.)

From the foregoing it would seem that the powers theretofore vested in the several states were re-established prior to the cession of the territory acquired by the Gadsden purchase.

But, considered from any standpoint, whether the rights delegated to the several states were destroyed or abridged by the acts centralizing the government or whether they remained unimpaired, yet I respectfully submit that the change from the federal to the central system was but a change of political rights and was not a change of property rights. The Constitution of 1836 claimed to protect every person in his property rights. (Article XLV., subdivision 3 of the Constitution of 1836.) This Constitution did not destroy, nor did it purport to destroy that invisible, intangible being, the state of Sonora; the name was changed and the form of government to a large extent, but the political entity was not annihilated; neither did the central Constitution divest, nor claim to divest, the former states of their right of disposition of the vacant lands within their respective borders.

This is further demonstrated by a reference to the subsequent scheme of government of the departments in 1843. (See title VI. of the basis of the political organization of Mexico, 1843—judicial power of the Supreme Court.)

This court laid down the rule for the interpretation of legislation as to the rights of property, in the case of *Rutherford vs. Green*, 2 Wheat., 96; and *United States vs. Aredondo*, 6 Pet., 691. The court said:

“Whatever the power of a legislature may be, its acts ought never to be construed, as to *subvert the rights of property*, unless its intention to do so shall be expressed in such terms as to admit of no doubt, and to show a clear design to effect the object.”

By the act of October 3, 1835, the legislatures of the states were directed to discontinue their legislative functions, but the governors and all subordinate officers of the states were continued in office, subject in the discharge of their duties to the supreme government of the nation. (Reynolds, pages 195-96.)

Article 1 of the law of April 17, 1837 (being the article referred to in the preamble to grants made by the departments mentioned *infra*), provides:

“Until the general congress establishes the revenues that are to form the national exchequer of Mexico the revenues, taxes and property of which the supreme government is in possession and the revenues, taxes and property which the departments established or acquired under the federal system and which existed at the time of the publication of the decree of October 3, 1835, shall continue.” (Reynolds, page 224.)

It is certain that in Mexico it was considered that the right of ownership or disposition of the public lands within the respective states as organized

and existing prior to 1836, inured to the benefit of the departments of the same name after the new organization centralizing the government in 1836. Sonora and other states or departments of the Mexican Union acted in accordance with this understanding. The preamble of the grant, in *Anisa, Administrator, etc., vs. United States* (161 U. S., pages 208-229)—this being a grant made during the departmental period—states:

“Whereas, Article 11 of the sovereign general decree, No. 70 of the 4th of August, 1824, ceded to the old states the revenues which in said law of the general government did not reserve to itself, one of which is that from the lands, in their respective districts, which, therefore, belong to them, and for the disposal of which the honorable constituent congress of the state, which was Sonora and Sinaloa, united, enacted laws, etc., etc. \* \* \* the said revenue from lands being now one of those of this department of Sonora which have continued and must continue as provided in Article 1 of the decree of the 17th of April, 1837, that of the same month, 1839, and of the 24th of December, 1840.”

This is the construction placed upon these laws by those charged with their execution. These officers assumed to have the right to sell and did sell and dispose of the public lands. They received the purchase price for these lands and turned the money into the public treasury.

The Mexican nation knew that the department of Sonora was disposing of the public lands within

its boundaries after the change of government in 1836. "We must in each case endeavor to ascertain what the Mexican government recognized as valid, and when this is done the duty of respecting and enforcing the grant arises." (*Camou vs. United States*, pages 7-8.)

From 1836 to 1853 the government of Mexico never protested against this exercise of power by the department or state of Sonora, and the non-action of the government certainly raises a strong presumption that the power was properly exercised. (*Ely's Administrator vs. United States*, page 8.)

With reference to the situation of affairs in Mexico at the time of the change from the federal to the central system, I beg to call attention to the following in *Ely's Administrator vs. United States*, *supra*, which, it seems to me is particularly applicable in this case:

"It is doubtless true that a change of sovereignty implies a revocation of the authority vested by the prior sovereign in local officers to dispose of the public lands. And yet we think that rule is not controlling in this case, for the new sovereign made an order continuing the functions of the local officers and one of these local officers, making a sale in accordance with the provisions of the prior laws, caused the money received therefrom to be paid into the treasury of the new sovereign, and that sovereign never returned the money thus received or challenged the validity of the sale thus made. It is not a case in which the local officers attempted to dispose of public lands in satisfaction of obli-

gations created by the former sovereign but one in which a sale was made for money and that money passed into the treasury of the new sovereign."

The record here discloses the unquestioned fact that the \$400 paid by Rodreguez for the land, and the money paid as fees and charges of the officers, was paid into the public treasury. (Record, pages 19 and 21.)

Third—I further respectfully submit that the learned court erred in holding that the appellee did not have title from the Mexican nation and that the laws of the nation were not complied with by the board of sale (Junta de Almondes) in making the sale to Rodriguez.

The opinion says, page 7, that the board of sale (Junta de Almondes) was a national instrumentality, not a state instrumentality, and continues:

"If however, the vacant lands became the property of the national government by the Constitution of 1836 and could be disposed of by or through the Junta de Almondes) the procedure required by the law creating it would have to be followed. This law provided that sales and purchases made by the board (junta) should be published for at least eight days beforehand and by placards which shall be posted in the most public and frequented places and shall be inserted in the newspapers of the greatest circulation, if there be any in the place, the notice to contain the more essential circumstances and the necessary instructions pertaining to the matter.

These provisions are not shown to have been complied with, and the record precludes any presumption that they were."

The regulations above quoted, to be followed by this board of sale, are those provided by article 131 of the treasury regulations of July 20, 1831. (Reynolds, page 160.)

In the light of the present holdings of the court that Sonora had the right of disposition of her public lands from the formation of the government up to 1836, it can not be claimed that the regulations of 1831 concerning the sale of national property when promulgated had in contemplation the sale of lands of the several states. It was not lands within the states, but other property that should be sold in the manner stated in the opinion, and the regulations which the court says were not complied with were not regulations with reference to the sale of the vacant lands of the states.

We must turn, then, to the condition of affairs after the change of government to the central system, and we find a decree was passed April 17, 1837 (Reynolds, page 225), providing for another and different board of sales, with power of purchase and sale of property. Article 73 of the law of April 17, 1837, is as follows:

"All the purchases and sales that are offered on account of the treasury and exceed \$500 shall be made necessary by the board of sale which in the capital of each department shall be composed of the superior chief of the treasury, the departmental treasurer, the first alcalde, the at-

torney general of the treasury and the auditor of the treasury, who shall act as secretary.  
\* \* \*.” (Reynolds, page 225.)

It was the board of sale provided for by this law that made the sale to Rodriguez. This board substantially complied with all the requirements of the law. The land was appraised for \$400. The board could not know until after sale that it might not bring to exceed \$500; hence its participation in the sale. The board did not act until after the proceedings leading up to the actual sale of the property had been submitted to the attorney general and he had made a favorable report thereon recommending that the land be sold by the board of sales, which recommendation was followed and the land sold by said board in accordance therewith. (Record, pages 17, 18.)

For the reasons hereafter stated, we are clearly of opinion that articles 12 and 13 of the regulations of October, 1835, quoted on page 5 of the opinion, did not have reference to the sale of lands within the state, and it was not necessary to have the previous approval of the supreme government for sales of property such as was made in this case.

There seems to be doubt about what part of the regulations of July 20, 1831, were in force in 1837, but with the law settled that the states had the right of disposition of their public lands up to at least 1836, it does not matter whether the regulations of 1831, or any part of them, were in force in 1837. The national government not having the right of disposition of these lands, in 1831, certainly could not have

been making regulations concerning their disposition at that time.

I respectfully call attention to the opinion of the court below upon the power of this board of sales. Mr. Justice Sluss, speaking for the court, uses this language:

"It is unquestionable that the sale, that is the essential act of passing the title, was performed by the board of sales, (Junta de Almondes). It was not made by any of the individual officials who were members of the board but by the board in its organized capacity as an official body.

"The board of sales was wholly unknown to the state law of Sonora and derived no authority from any law of Sonora as a state. It was an official body expressly created by the Mexican national government and vested with absolute power to make sales of public lands within that department.

"Now, the act of making a sale is the essential thing—the gist and meat of the transaction. And it is the actual authority with which the board was invested, and not what the individual members of the board thought about the source of that authority, which gave effect and validity to its act in making the sale.

"By section 17 of the decree of April 17, 1837, these several officers composing the board, being officers of the former state and of the then existing department, were taken, and constituted, a part of the nation, clothed with national authority to make the sale of the land.

“The board so created and so authorized did in fact make the sale \* \* \*.” (Record, page 243.)

While I believe that in all substantial respects this board of sale complied with the laws of Mexico in making sale, yet I respectfully submit that if the right of disposition of these lands was in this board of sales and the board sold the same to Rodriguez and Rodriguez paid his money for the land, that the Mexican government while retaining the money would be estopped from saying that its officers did not technically comply with the provisions of its laws in making the sale. If the board had authority to sell and did sell for a money consideration, and the Mexican nation had full knowledge, as it must have had, of the action of the board, it will not be permitted to set up a technical non-compliance with its laws by its own officers in making the sale. The new government (United States) takes the place of the old (Mexico), and will protect all property rights that Mexico would have protected had the ceded territory remained within the jurisdiction of the latter.

“It was undoubtedly the duty of congress, as it was its purpose in the various statutory enactments it has made in respect to Mexican titles, to recognize and establish every title and right which before the cession, Mexico recognized as good and valid. In other words, in harmony with the rules of international law, as well as with the terms of the treaties of cession, the change of sovereignty should work no change in respect to rights and titles; that which was good

before should be good after; that which the law would enforce before should be enforceable after the cession." (Ely's Administrator vs. United States, *supra*.)

The language of this court, speaking through Mr. Chief Justice Marshall, concerning a deed made by authority of a sovereign state, is most applicable in this case:

"The legislature of Georgia was a party to this transaction; and for a party to pronounce its own deed invalid, whatever cause may be assigned for its invalidity, must be considered as a mere act of power which must find its vindication in a train of reasoning not often heard in courts of justice." (Fletcher vs. Peck, 6 Cranch, page 87.)

---

#### THE FOURTH PROPOSITION.

The opinion (page 9) says: "It is conceded that at the time of the grant the state of Sonora was in rebellion against the nation. It and its officers, therefore, were opponents of the national authority, not its instruments; while declaring independence of it they could not claim to act for it and convey its title."

I respectfully ask the pardon of this learned court in earnestly dissenting from this statement in the opinion. It has at least never been intended to concede, for such is not the fact, that at the time of the grant in this case, or at any other time, the state of Sonora was in rebellion against the nation. The

situation in Sonora was far different from that in Texas. Texas was in fact in rebellion against the nation, attempting to, and finally succeeded, in setting up and maintaining an independent government. This was not the situation in Sonora. Sonora never attempted to secede from Mexico. At all times, and in transacting all public business, and in transacting the business with reference to this grant she recognized "the august Mexican nation." She never declared or attempted to declare her independence of the Mexican nation.

In December, 1837, General Urrea, the governor of the department of Sonora, who had been appointed by and with the approval of the supreme government, and acting under such appointment "proclaimed" against the central system and reassembled the congress of the state under the federal system. (Record, page 105.) There was no attempt to secede from the Union, no attempt to exercise independent authority or claim allegiance to any other power than that of Mexico. The only claim was that she had a right to exercise her political functions under the national Constitution of 1824. The general government never treated Sonora as in a state of insurrection or rebellion. It was not the officers who executed these title papers, either those of the state or the nation, but others who had set up this claim on behalf of Sonora; but however true this may be, it is also true that all of the officers at all times recognized that Sonora was a part of the "august Mexican Nation," and subject to its dominion and authority. The Mexican nation never questioned the validity of the transaction of public business in Sonora during this

period. Neither the general government nor Sonora herself ever repudiated the transactions of that period. It is disclosed by this record that during the year 1838 more than twenty grants of land were made in Sonora. These grants are recognized as valid titles to-day. (Record, pages 85-86), and if it had been considered that these officers were exceeding their powers in making those grants, we certainly would find some law or decree disapproving or annulling their acts.

As a state, Sonora had a right to make sale of public lands. As a department, she had the same right. Such grants or sales vested title in the grantees, and certainly until some disapproval of these acts by the national government was formally signified the estate would remain in the grantee. The Mexican nation acquiesced in the powers exercised by Sonora at the time this grant was made. The history of those times shows that during all of the period after the departmental governor had proclaimed against the central system Sonora was represented in the national congress and was a part of the national government.

I now respectfully beg to call special attention of this learned court to the following with reference to the laws quoted in the opinion, and it is proper here to keep in mind the fact, that this grant is not a colonization grant, but one of bargain and sale to

a native Mexican citizen for the purpose of settlement and cultivation; the right to make these sales and to receive the revenue from them was vested in the states, not by the law of colonization, but by the law classifying the revenues, and while the former was repealed and the power to colonize foreigners was assumed by the national authority, under the central system, the law of August 4, 1824, classifying the revenues was never repealed, but on the contrary was expressly retained in force. (See article 1, decree, April 17, 1837; Reynolds, page 224.)

If this learned court will note this distinction between the law governing colonization and the right to sell vacant public lands to Mexican citizens, it will be seen that the law of April 17, 1837, of December 7, 1837, of September 15, 1837, of April 25, 1835, and of April 4, 1837, in no way conflict with or affect the right of the officers of the several states or departments to dispose of their vacant public lands to their own citizens.

It is conceded that the right to make the sales of land was vested in the officers of the respective states prior to the change of the form of government in 1836; after this date the court in its opinion justly gives great weight to the language of the laws of the period leading up to and terminating in the change of the form of government. The first of these laws referred to is that of October 3, 1835, and the regulations promulgated as a part of the same. The former (the laws) contain no provision referring to public lands, and the latter (the regulations), when properly construed, or perhaps more accurately speaking properly translated, are equally silent on the same subject. It will be noted that from August 4,

1824, until long after the sale of the land involved in this controversy, two classes of property had been considered in all the laws with reference to the disposition of property in Mexico; namely, those classes of property included in the first ten articles of the act of August 4, 1824, the revenues of which were reserved to the nation and the other classes of property referred to in article 11 of that act, the revenues from which and the power of disposition of which was vested in the states, as has been held by this court in the several cases passed upon at this term.

As has been heretofore stated, the regulations of 1831 must of necessity have referred to that class of property only the revenue arising from which was reserved to the nation, and hence can not have applied to the vacant lands the revenue arising from which belonged to the states.

Article 13 of the regulations of October, 1835, when properly construed (or, rather, translated) is in no way inconsistent with the right of the states or of the successors of the states—the departments—to dispose of the vacant lands within their respective boundaries. The translation of the 13th article of the regulations of 1835, cited in the opinion, would appear on its face to restrict the power of the governors to make sales of this class of lands without having the previous authority of the supreme government, and this seems to have been considered of great, if not controlling importance in the opinion rendered in this case, for without this restriction on the part of the governors there is no limitation put upon the power of the officers of the departments to perform all the functions that had theretofore been performed by the officers of the states.

It is now settled that the revenues from all sources named in the first ten articles of the revenue act of August 4, 1824, were reserved to the Mexican nation, and that the revenue derived from the sale of the vacant public lands within the states was not included in either one of the first ten articles of that act, but was excluded therefrom, and that this was one of "the revenues which are not included in the foregoing articles" and which by the eleventh article is declared to "belong to the states."

Camou vs. The United States, No. 28.

Perrin vs. The United States, No. 30.

Among the articles of this revenue act, specifying the revenues which are reserved to the nation, is article 9, which is translated as follows:

"9—The national *property*, in which are included that of the inquisition and the temporalities, and all other rural and urban *estates* which now belong, or which may hereafter belong to the public treasury."

In order to understand fully the entire system provided in Mexico for raising and classifying the revenue, it becomes necessary to resort to the original Spanish, so as to avoid a confusion of terms, which has, we most respectfully suggest, possibly misled the court:

The words "national property," as used in article 9, and which are included in the revenues reserved to the nation, are in the original "*bienes nacionales*," and the word "estates" as used in the same

article is in the original "*fincas*." Said article 9, in the original, being in full as follows:

"9. Los *bienes* nacionales, en los que se comprenden los de la Inquisicion y temporalidades, y cualesquiera otras *fincas* rusticas y urbanas que pertenecen o que pertenecieren en lo de adelante a la hacienda publica."

It will thus be seen that the national property, "*bienes nacionales*" and the estates, both rural and urban, "*fincas rusticas y urbanas*," furnish a portion of the revenues which are reserved to the nation, and which, under the decisions in the case of *Camou vs. The United States*, *supra*, and *Perrin vs. The United States*, *supra*, do not and can not be held to include the vacant public lands. And these decisions are in accord with the meaning and general understanding of these terms when used in Mexican legislation, for whenever, in such legislation, it was intended to refer to the public lands, or to the vacant public lands, the terms "*baldios*" or "*hucos y baldios*" were universally used.

It is important that this use of terms should be particularly noted in order that these terms may be given the same meaning whenever they occur in subsequent legislation or regulations relating to the same subject matter.

This being the status of affairs, that is the revenues arising from the sale of the vacant lands within their respective borders having, by the act of August 4, 1824, been assigned to the states, it was natural and in accordance with the declared system of Mexico that the colonization law of August

18 of the same year provided that "the congresses of "the several states shall enact \* \* \* laws or "regulations for the colonization of their respective "demarcations \* \* \*." (Reynolds, 121.) And it was not at all inconsistent with this system that the nation should, in 1831, make regulations in respect of the sale of such property as had, by the revenue act of August 4, 1824, been reserved to the nation, and that these regulations could not have been intended to apply to the public lands (*baldios*) is clearly shown by decisions of this court in the Camou case, *supra*, and in the Perrin case, *supra*, in both of which cases the title was issued by the state officers after the promulgation of the regulations of 1831.

This brings us to the act of October 3, 1835, and the regulations made thereunder, and here is the first apparent departure from the well settled system of Mexico, *i. e.*, that the national property (*bienes*) and the national estates (*fincas*) were to be disposed of under the law and regulations of the nation, while the public lands (*baldios*) in the states were to be disposed of by the respective states and their officers. We say apparent, for the departure is only apparent. There was no real departure, and the apparent departure, counsel respectfully suggests, grows out of the confusion of terms, to which reference has already been made.

There is nothing in the act of October 3, 1835, which in any way interrupts or interferes with the prevailing system, and the only apparent reference to the revenues from or the sale of the public lands is in article 13 of the regulations. This article, as translated, is as follows:

"13—Until the attributes of the government  
"and departmental boards in what relates to the  
"treasury are declared by law, said governor  
"shall make no sales of *land (fincas)* or *property*  
"(*bienes*) nor contracts, nor extraordinary ex-  
"penses for said department without previous  
"approval of the supreme government."

The learned court has construed the word  
"lands" as used in this article to cover vacant public  
lands of Mexico, and has so construed the article as  
to inhibit the governors from making sales of lands  
such as those purchased by the grantee in this case.

A reference to Mr. Reynolds' compilation and  
translation of these laws—and, in fact, a reference  
to all laws of Mexico where the word is used—will  
show that this construction is exactly in opposition  
to the true definition of the word "*fincas*" as used by  
the translator, and of course as used by the original  
law-maker, and it is here but just to observe that  
in no particular is the care exercised in the prepara-  
tion of the valuable work of Mr. Reynolds more  
clearly shown than in the fact that where a word  
which has a doubtful or a double meaning is rendered  
into English, it is followed by the word as used in  
the original Spanish.

Thus in this case the word *fincas* is sometimes  
rendered land, but never in the sense of public or  
vacant land. This is shown by the excellent defini-  
tion given of *fincas* on page 43 of the same work.  
There the author says:

"*Fincas* are all those lands that are not *bal-  
dios* or public lands—wild unimproved lands be-

"longing to the nation." And we now add the words "or states."

It is very certain that the word "*fincas*" is used in contradistinction to the word "*baldios*," the former referring to one class of property and the latter to another.

In other words, *fincas* when used in the regulations means just what this court held, the same word meant when used in the ninth article of the act of August 4, 1824, *i. e.*, lands other than vacant public lands. The same may be said of the word property (*bienes*). Though a broad term, it has never been used in Mexican legislation as referring to the vacant public lands, and it should be given the same meaning here as in the act of August 4, 1824, namely, as referring to other classes of property than such lands.

Illustrative of this we find the following in the Mexican legislation:

July 5, 1836, the national congress passed a revenue act entitled

"July 5 de 1836, Law—An annual tax of 3 per 1000 in the value of rural *fincas* in the republic is established."

Legislacion Mexicana by Dublan y Lozano,  
volume 3, page 176, No. 1755.

On October 3, 1836, we find another law explanatory of this revenue act, in full as follows:

"October 3, 1836, Law—Properties that remain subject to rural taxation under the denomination of rural *fincas*.

“Under the denomination of rural *fincas* to which the law of July 5th last refers is included all rural property under the names of farm (hacienda) ranch, orchard or other similar name whatever be its location, in or out of towns, with a house or without, the products from which are agricultural; except those places in settlements which are cultivated for mere recreation, without special profit to the owner.”

Id., volume 3, page 197, No. 1779.

Giving to these two terms this meaning and the apparent interruption or departure from the settled system of disposition of property in Mexico disappears. It will be remembered that the nation was at this period in a transitory state, passing from a federal to a central form of government. While the departments succeeded the states with the same names, and while the departmental officers were changed in name, their duties were identical, except where they conflicted with express laws. (Article XCII., Decree of April 17, 1837.) The classification of the revenues was expressly retained (see article I., Decree of April 17, 1837), and in every particular, except as to the political status, and where otherwise expressly provided by law, the right of the states remained in the departments, and in respect of property rights there was no change whatever.

The construction here given to the thirteenth article of the regulations of October, 1835, and this construction only, can make a consistent system for the disposition of public property in Mexico; and this construction, and this construction only, is consist-

ent with the correct definition, or rather translation, of the word "*fincas*" as used in that article, as contradistinguished from the word "*baldios*," which is always used in the Mexican law when the vacant public lands are referred to.

---

With reference to the mortgage given by the Mexican nation, it is sufficient to say that no one is making or has made any claim under it. Were such a claim made different questions would arise, but as this mortgage, and the other stipulations given as security for its payment were made solely for the benefit of the mortgagee, it is not clear how the United States can avail itself of them.

No specific lands are given. When the purchaser of the scrip presented himself to the local authorities, he could have it assigned to him by metes and bounds. Until then, he had title to no particular tract. His script, until located, was like a floating grant, or a United States soldier's warrant for land.

Hundreds of grants were made in California, a territory of the nation, subsequent to 1837 under the law of August 18, 1824, and the regulations of 1828, and confirmed by this court, notwithstanding the fact that California was one of the departments in which part of the hundred million acres of land was pledged as security for the national debt.

Treated as a mere assertion, on the part of the Mexican nation of a co-ordinate, or even a superior right to dispose of the public domain, this is immaterial unless some person shall appear who holds under some conveyance or grant made in pur-

suance of such right; and it should not be forgotten that all this mortgage legislation was enacted by those who had imposed the central system upon the nation.

The theory adopted by the opinion, that the lands in question were sold by state authorities on the state account, suggests the further consideration that at the time of the sale Sonora, while not claiming to be independent of the nation, was a conservative protestant against the dictatorial proceedings which gave rise to the Central System; she claimed that the Constitution of 1824 still existed *de jure*, and ought to be re-established in fact; in 1846 that Constitution was rehabilitated everywhere in Mexico as an instrument never rightfully annulled. This rehabilitation reinvested Sonora with her old dominion, and in 1849 the decree with reference to Sonora's lands (Reynolds, page 294) expressly admitted her then existing right to cede them. In this situation of affairs Sonora could not, after the rehabilitation of the Constitution of 1824, justly or equitably repudiate the sale of this land. She never attempted to do so, and if, as stated in the opinion, she sold the land in the exercise of what she claimed to be her constitutional powers, the re-establishment of the Constitution of 1824 and her right of disposition of her vacant public lands would by relation confirm what she had done under her old claim of right.

In conclusion: I do not think it proper to take the time of this learned court in considering petitions for rehearing; ordinarily I would not presume to do so; to ask that this be done in the present case is to me a question of much delicacy. It is, however, true

that in this case the questions involved are largely new and at least difficult of proper solution. The court was nearly equally divided in opinion; all the equities in the case are with the appellee; there is no dispute about his boundaries; he has never claimed anything but that which was sold to and paid for in cash by those under whom he claims; he has no quarrel with settlers; he bought the land in good faith, and has spent *all* his fortune in trying to reclaim it and make it fit for cultivation. These facts appear in the record; to repeat them here is but again saying that which was said by all the members of the court below before whom the testimony was taken.

With strong convictions of the justice and right of the appellee's case we respectfully and earnestly ask that the prayer of this petition be granted.

A. M. STEVENSON,  
Counsel for Appellee.

JNO. F. SHAFROTH,  
Of Counsel.

We hereby certify that in our opinion the foregoing petition for rehearing is well founded in law.

A. M. STEVENSON.  
JNO. F. SHAFROTH.

June 23, 1898.